

FINANCIAL INSTITUTIONS COMMITTEE MEETING
Business Law Section, State Bar of California

Meeting of February 14, 2006

Committee Members Present: John Hancock, Chair; Rosie Oda, Secretary; Jim Dyer.

Advisory Members and Others Present: Bob Mulford; Neil Rubenstein; Assm. Ron Calderon; Assm. Roger Niello, Mark Farouk; John Drews; Ken Sayre-Peterson; Maurine Padden; and Larry Doyle.

Welcome to Members and Advisory Members: Maurine Padden, Vice President/Director, State Government Relations, California Bankers Association, welcomed the Committee Members and the Advisory Members to the special Legislative Day meeting that she and Larry Doyle, Chief Legislative Counsel, State Bar of California, had organized for the benefit of the members of our Committee, at 10:30 a.m.

Our speakers were: Assm. Ron Calderon, Chair, Assm. Committee on Banking and Finance (“CBF”); Assm. Roger Niello, Vice-Chair, CBF; Mark Farouk, Committee Chief Consultant, CBF; John Drews, General Counsel, Department of Financial Institutions (and also an Advisory Member of our Committee); Ken Sayre-Peterson, Assistant General Counsel, DFI.

1. Assm. Calderon: Assm. Niello later made a point of telling us that Assm. Calderon runs his Committee with a very open style, allowing a lot of discourse between members, which he regarded as relatively rare for the Chair of a Committee. True to that description, Assm. Calderon provided us with a very candid look at the issues and problems he is facing as Chair.

Assm. Calderon pointed out that there are no state agency resources to enforce new laws, which made it very difficult to assemble a legislative agenda. This year, his Committee has worked on several new laws that:

- Clarify the ability of credit unions to offer Health Savings Accounts
- Provide disclosures of property taxes for residential home buyers
- Clarify that tax refund anticipation loans cannot be advertised as refunds
- Prohibit the use of recycled bank account numbers for 3 years.

The latter bill was especially important because of the potential exposure of private information about the former account holder to the new account holder.

The CBF held hearings on sale/leaseback transactions and on raising the sub-prime loan limit to the FNMA limit. The Committee is awaiting a vote on S.B. 550, known as the “Choicepoint” bill, which will regulate disclosure of compromised data by data brokers.

Assm. Calderon applauded the recent decision in *AFSA v. Oakland*, which held that the California covered loan (i.e., predatory lending) law pre-empts local ordinances on that subject. He said that to decide otherwise would have required brokers to comply with dozens of different local municipal ordinances. At the same time, he expressed concern with the impact of federal pre-emption of state law.

He predicted that the legislature would continue to look for creative ways to protect the public from identity theft protection, such as A.B. 424. He indicated that this bill would grant corporations similar rights to protection from identity theft that as are now available to persons.

He also said that he would continue to look into the practice of some banks that are charging check cashing fees for cashing payroll checks for unbanked employees even though the employer's checking account is at that bank. This started a discussion of existing law, Cal. Labor Code section 212, by Bob Mulford and others. Neil Rubenstein of Buchalter asked whether violations of this section had resulted in any lawsuits under Bus. & Prof. Code section 17200, which prompted a discussion of the lack of enforcement of this law against employers and a recent settlement of a class action suit involving BofA. Our Committee Chair John Hancock of World Savings commented that banks might already be required to cash checks issued on their accounts for free under the UCC.

Assm. Calderon noted that he was in the process of drafting legislation that would expressly permit the use of payroll cards for a small fee. He has been negotiating with labor organizations about a suitable fee. He pointed out that stored value cards had been used successfully to help Katrina victims.

Finally, Assm. Calderon indicated that he was interested in providing some kind of education to consumers to encourage them to shop for credit. For example, he indicated that banks should advise a customer whether it was a good idea to refinance a low interest fixed rate mortgage in order to consolidate and pay off other loans when the customer might be better off qualifying for a 10 year line of credit.

2. Assm. Niello: He addressed a question by Neil as to whether legislation could be enacted to require schools to provide financial education. Assm. Niello replied that the Governor had already vetoed at least one bill requiring that a certain subject be taught, and that he himself would never vote for a bill requiring any particular curriculum. He said that should be left to educators to decide. He described his general view of legislation as all legislators are activists and wouldn't be there otherwise; thus, the biggest problem was to avoid unintended consequences.

John then asked whether term limits needed to be changed. Assm. Niello said that there were positives and negatives. From his point of view, it was positive that more people now had the chance to run for office, that term limits have brought more new legislators in from local government and who have private business experience. He indicated that legislators, however, should be given a bit more time in office to maximize their

effectiveness. But he pointed out that the press for term limits actually comes from outside California, and it is unlikely that term limits will be changed.

3. DFI: John Drews explained that there was not that much going on. He then discussed his own personal view, as yet unapproved, that the DFI issue new credit union regulations to cover private share insurance in conjunction with the Department of Insurance. He explained the background of private share insurance in California and the attendant risks. John also commented that the DFI had no authorization for clean-up legislation.

Ken Sayre-Peterson discussed the DFI's continuing efforts to improve process, which has been going on since the concept was introduced by former Commissioner Howard Gould. John then discussed his intention to seek feedback on DFI attorney performance by state banks and their counsel, to parallel Commissioner Gould's idea of CAMEL ratings for examiners.

4. Mark Farouk, CBF: Mark announced that there would be an informational hearing on February 27, 2006 at 1:30 p.m. to review possible licensing of nonprofit credit counselors (credit consolidators are currently licensed) in view of recent federal bankruptcy legislation requiring use of such services by applicants. He also said that the CBF was looking into codifying the "non-punitive" parts of the Ameriquest settlement, which involved a California based mortgage company which provides high cost loans to sub-prime borrowers, and which was accused of predatory lending in several states, to require additional disclosure. This prompted an observation from our Chair about unintended consequences and the probability that the public does not read current mortgage disclosure documents.

5. Lunch: Attendees then adjourned for a long lunch and continued, lively conversation at the Broiler with Maurine, Mark and Larry.